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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/688,793	10/17/2003	Antoine Briant	ADI-085CP	9745

51414 7590 06/07/2005

GOODWIN PROCTER LLP  
PATENT ADMINISTRATOR  
EXCHANGE PLACE  
BOSTON, MA 02109-2881

EXAMINER

PATTERSON, MARIE D

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 06/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/688,793	Applicant(s) BRIANT ET AL.	
	Examiner Marie Patterson	Art Unit 3728	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 April 2005.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-13 and 15-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-9 and 16-19 is/are rejected.
- 7) ☒ Claim(s) 2, 10-13, and 15 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 5-9, and 16-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Swindle (6050006).

Swindle shows a shoe with a stud base/sole (12), a receptacle (14) with a flexible wall (top discussed in column 4 lines 9-25) with a first locking means (34) located on the flexible wall, and a stud (18) with an oblong locking member (24, column 3 line 47) as claimed.

In reference to the limitation of “forming a sole body” as claimed in claim 1, the sole body of Swindle is “formed” around the receptacle, i.e. the sole takes shape, is located, or is present around the receptacle. There is no recitation or limitation as to how the sole is made/formed around the receptacle or at what point in the process of making the shoe the actual forming of the shoe occurs. There is no requirement in these claims for the sole to be injection molded or press molded around the receptacle.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swindle.

Swindle shows a shoe and inherent method of making said shoe substantially as claimed except for the exact conventional method of molding the receptacle and the method of forming the sole. Swindle teaches using molding methods for making the receptacle (column 4 line 10) and the use of injection molding is extremely well known and conventional in the art of molding footwear. Swindle also teaches making the outer sole from plastics and rubber (see column 3 lines 25-30) and the use of injection molding to form outer soles is extremely well known and conventional. It would have been obvious to form the receptacle and outer sole by injection molding techniques which are well known and conventional in the art of footwear in the shoe and inherent method of Swindle to allow the shoe to be made quickly and easily manufactured in mass quantities.

***Allowable Subject Matter***

5. Claims 2, 10-13, and 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Terminal Disclaimer***

6. The terminal disclaimer filed on 4/28/05 has been reviewed and is accepted. The terminal disclaimer has been recorded.

***Response to Arguments***

7. Applicant's arguments filed 4/28/05 have been fully considered but they are not persuasive.

In response to applicants' arguments directed towards the rejection based on Swindle, there is no requirement in the claims for fabricating the sole around the receptacle or the locking means being a single structure and therefore arguments directed towards such are not persuasive.

In response to applicants' argument directed towards claim 8 requiring "forming an inseparable bond at least with the sidewall of the stud base", this is not claimed and therefore the arguments directed towards such are not persuasive.

8. It is noted that the foreign priority document 10118986 has been received in prior application 10/125057. However foreign priority document 10248482 has not been received in the office.

1. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). Other useful information can be obtained at the PTO Home Page at [www.uspto.gov](http://www.uspto.gov).

In order to avoid potential delays, Technology Center 3700 is encouraging FAXing of responses to Office Actions directly into the Center at (703) 872-9306 **(FORMAL FAXES ONLY)**. Please identify Examiner Marie Patterson of Art Unit 3728 at the top of your cover sheet.

Any inquiry concerning the MERITS of this examination from the examiner should be directed to Marie Patterson whose telephone number is (571) 272-4559. The examiner can normally be reached from 6AM - 4PM Mon-Wed.

Art Unit: 3728

A handwritten signature in black ink, appearing to read 'M. Patterson', with a stylized, flowing script.

Marie Patterson  
Primary Examiner  
Art Unit 3728